United States, in accordance with the following order of precedence:

* * * * *

■ 4. Revise § 707.5 to read as set forth below:

§ 707.5 Incompetency.

(a) Where any person who would otherwise be eligible to receive a payment is adjudged incompetent by a court of competent jurisdiction before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely and binding program application has been filed by the person involved while capable or by someone legally authorized to file an application for the person involved. Timeliness is determined under the relevant program regulations. In all cases, the payment application must have been timely under the relevant program regulations and all program conditions for payment must have been met by or on behalf of the person involved. However, the payment will not be made unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, to the guardian or committee legally appointed for the person involved. In case no guardian or committee had been appointed, payment, if for not more than $1,000, may be released without regard to claims of creditors other than the United States, to one of the following in the following order for the benefit of the person who was the subject of the adjudication:

(1) The spouse.

(2) An adult son, daughter, or grandchild.

(3) The mother or father.

(4) An adult brother or sister.

(5) Such person as may be authorized under State law to receive payment for the person (see standard procedure prescribed for the respective region).

(b) In case payment is more than $1,000, payment may be released only to such person as may be authorized under State law to receive payment for the incompetent, so long as all conditions for other payments specified in paragraph (a) of this section and elsewhere in the applicable regulations have been met. Those requirements include the filing of a proper and timely and legally authorized program application by or for the person adjudged incompetent. The release of funds under this paragraph will be made without regard to claims of creditors other than the United States unless the agency determines otherwise.

§ 707.6 [Amended]

■ 5. Amend § 707.6 by removing the words "apply for a payment" and adding, in their place, the words "apply for a release of a payment".

■ 6. Amend § 707.7 as follows:

■ a. Revise the heading to read as set forth below, and

■ b. Remove the first sentence and add in its place the seven sentences set forth below.

§ 707.7 Release application.

No payment may be made under this part unless a proper program application was filed in accordance with the rules for the program that generated the payment. That application must have been timely and filed by someone legally authorized to act for the deceased, disappeared, or declared-incompetent person. The filer can be the party that earned the payment themselves—such as the case of a person who filed a program application before they died—or someone legally authorized to act for the party that earned the payment. All program conditions for payment must have been met before the death, disappearance, or incompetency except for the timely filing of the application for payment by the person legally authorized to act for the party earning the payment. But, further, for the payment to be released under the rules of this part, a second application must be filed. That second application is a release application filed under this section. In particular, as to the latter, where all other conditions have been met, persons desiring to claim payment for themselves or an estate in accordance with this part 707 must do so by filing a release application on Form FSA–325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent." * * *

Signed in Washington, DC, on December 22, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–32760 Filed 12–28–10; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1366]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for public comment.

SUMMARY: The Board is publishing for comment an interim rule amending Regulation Z, which implements the Truth in Lending Act (TILA). This interim rule revises the Board's interim rule published on September 24, 2010, which implemented certain requirements of the Mortgage Disclosure Improvement Act of 2008. The September 2010 interim rule requires creditors who extend consumer credit secured by real property or a dwelling to disclose summary information about interest rates and payment changes in a tabular format. The Board is issuing this interim rule to clarify certain provisions of the September 2010 interim rule. Specifically, this rule clarifies the requirements for adjustable-rate transactions that are "5/1 ARM" loans. It corrects the requirements for interest-only loans to clarify that the disclosures should reflect the date of the interest rate change rather than the date the first payment is due under the new rate. This interim rule also revises the definition of "negative amortization loans" to clarify which transactions are covered by the special disclosure requirements for such loans.

DATES: This interim rule is effective January 30, 2011. Compliance with its provisions is optional, however, for transactions for which an application for credit is received by the creditor before October 1, 2011. This interim rule does not change the January 30, 2011 mandatory compliance date of the September 2010 interim rule. Comments on this interim rule must be received on or before February 28, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1366, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/*

generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson, Attorney, or Paul Mondor, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

B. MDIA Amendments to TILA and Regulation Z

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (the MDIA).[1] The MDIA amended TILA and requires transaction-specific TILA disclosures to be provided within three business days after an application for a closed-end mortgage loan is received and before the consumer has paid any fee (other than a fee for obtaining the consumer's credit history).[2] Creditors also must mail or deliver these early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The MDIA also expanded coverage of Regulation Z's early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling. The Board implemented these MDIA requirements in final rules published May 19, 2009, which became effective July 30, 2009 as required by the statute. *See* 74 FR 23289; May 19, 2009 (MDIA Final Rule).

The MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee the consumer will be able to refinance the transaction in the future. Under the statute, these provisions of the MDIA will become effective on January 30, 2011. On September 24, 2010, the Board published an interim rule to implement these requirements. *See* 75 FR 58470; Sept. 24, 2010 (September 2010 Interim Rule). The Board is issuing this interim rule to make certain clarifying changes to provisions in the September 2010 Interim Rule.

II. Summary of the Interim Rule

The MDIA amended TILA to require creditors to disclose examples of rates and payments, including the maximum rate and payment, for loans with variable rates or payments. The act also requires creditors to disclose a statement that consumers should not assume they can refinance their loans. On July 23, 2009, the Board published a proposed rule to revise the disclosure rules for closed-end credit secured by real property or a consumer's dwelling. *See* 74 FR 43232; Aug. 26, 2009 (2009 Closed-End Proposal). Among other things, the 2009 Closed-End Proposal included provisions to implement MDIA's new interest rate and payment disclosure requirements. Because the 2009 Closed-End Proposal is not expected to be finalized before the January 30, 2011 effective date of the MDIA disclosure requirements, the Board issued the September 2010 Interim Rule to provide creditors with the guidance necessary to comply by the statutory deadline. The September 2010 Interim Rule is substantially similar to the provisions of the 2009 Closed-End Proposal that implemented the interest rate and payment disclosure requirements of the MDIA.

Under the September 2010 Interim Rule, creditors will be required to disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including an estimated amount for any escrows for taxes and property and/or mortgage insurance. Special disclosure requirements are imposed for adjustable-rate or step-rate loans to show the interest rate and payment at consummation, the maximum interest rate and payment at any time during the first five years after consummation, and the maximum interest rate and payment possible during the life of the loan. Additional special disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments. Finally, consistent with the statute, the September 2010 Interim Rule requires the disclosure of a statement that there is no guarantee the consumer will be able to refinance the loan with a new transaction in the future.

This interim rule clarifies the requirement in the September 2010 Interim Rule that, for adjustable-rate and step-rate loans, creditors disclose the maximum interest rate and payment during the first five years. As modified by this rule, creditors must base their disclosures on the first five years after the first regular periodic payment due date, rather than the first five years after consummation. The clarification is intended to ensure the disclosures are consistent with the manner in which payments are typically structured for adjustable-rate transactions that are "5/1 ARM" loans.

In addition, this interim rule clarifies the requirements for disclosing the payments on an "interest-only loan." Under the September 2010 Interim Rule, for each interest rate disclosed, the creditor must disclose the earliest date that rate may apply and the corresponding periodic payment. For an interest-only loan, if the corresponding payment will be applied to both accrued interest and principal, the September 2010 Interim Rule further requires the creditor to disclose the earliest date that such payments will be required. This interim rule would eliminate the potential conflict from disclosing two

[1] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Public Law 110–289, enacted on July 30, 2008. The MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

[2] The MDIA codified some requirements adopted by the Board in a July 2008 final rule prior to the MDIA's enactment. 73 FR 44522, July 30, 2008 (2008 HOEPA Final Rule). To ease discussion, the description of the MDIA's disclosure requirements includes the requirements of the 2008 HOEPA Final Rule.

different dates in the same column, by clarifying that creditors should disclose the earliest date that the interest rate becomes effective rather than the date that the first payment is due under the new rate.

Also under this interim rule, the definition of "negative amortization loan" is being revised to clarify which transactions are covered by the special disclosure requirements for such loans. Those disclosures were designed to show consumers how their periodic payments could increase over time and to enable comparisons between the consequences for consumers of making "minimum" and "full" payments. The revision would clarify that these disclosures apply only to loans where consumers are allowed to make minimum payments that result in negative amortization. Thus, the revised definition of "negative amortization loan" excludes loan products that do not have a minimum required payment that results in negative amortization. For example, some loans that are designed for borrowers with seasonal employment require level, amortizing payments, but do not require payments in certain months; during months when no payment is made the accrued interest increases the loan balance. As clarified, the special disclosure requirements for negative amortization loans do not apply to the excluded loans, even though some negative amortization can occur because of the capitalization of accrued interest from time to time. Such loans will be disclosed under the rules for amortizing loans.

Finally, this interim rule clarifies how the provisions in the September 2010 Interim Rule apply to home construction loans. A new staff comment accompanying Appendix D clarifies that, when a construction loan secured by real property or a dwelling that may be permanently financed by the same creditor is disclosed as more than one transaction, the construction financing must be disclosed under the new rules for interest rate and payment summary tables. On the other hand, if the creditor discloses the construction and permanent financing as a single transaction, the summary table should reflect only the permanent financing, while the construction financing should be disclosed only with a statement outside the table that interest payments must be made and the timing of such payments.

III. Legal Authority

A. Rulemaking Authority

TILA Section 105(a) directs the Board to prescribe regulations to carry out the Act's purposes. 15 U.S.C. 1604(a). TILA also authorizes the Board to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion.

B. Authority To Issue Interim Rule

The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). The 2009 Closed-End Proposal provided the public with notice and an opportunity to comment on the Board's proposed disclosure changes, including the proposed interest rate and payment summary tables that would implement the MDIA. The September 2010 Interim Rule adopted only those provisions of the 2009 Closed-End Proposal that implement the MDIA requirements that will become effective on January 30, 2011. Accordingly, the Board believed that the September 2010 Interim Rule complied with the APA's public notice and opportunity to comment requirement. The Board adopted the provisions concerning interest rates and payments as an interim rule, rather than as a final rule, because the Board intended to conduct additional testing of these and other disclosure requirements, including quantitative testing, and may revise the interim provisions further in light of further testing results. The Board sought to permit further public comment while also giving the provisions effect so that creditors would have the guidance they need and the time to implement it by January 30, 2011, as discussed above.

For the same reasons, the Board is now implementing these clarifications by interim rule to ensure timely publication and effectiveness of the additional guidance it provides before the statutory requirements become effective. The additional guidance is needed to prevent compliance burdens that otherwise would result from certain conflicts and uncertainties in the existing provisions as implemented by the September 2010 Interim Rule.

Comments on the September 2010 Interim Rule raised additional issues that are not being addressed at this time. The Board believes that issuing a permanent final rule imposing further changes in creditors' disclosure so soon before the mandatory January 30, 2011 compliance date would impose undue burden on creditors. Accordingly, this interim rule is being published only to clarify certain issues that created uncertainty for creditors on how to comply with the September 2010 Interim Rule before the statutory effective date. Other comments received on the September 2010 Interim Rule, as well as this interim rule, can be taken into consideration before publication of a permanent final rule.

IV. Overview of Comments Received on the Interest Rate and Payment Summary Tables

The September 2010 Interim Rule provided an overview of comments on the 2009 Closed-End Proposal. *See* 75 FR 58470, 58472; Sept. 24, 2010. In response to the September 2010 Interim Rule, the Board received 36 comments. Most of those were from creditors and their trade associations and form-software vendors that provide creditors with systems to generate disclosures. They raised various practical concerns with the new requirements. The concerns addressed in this interim rule are described below.

Several commenters expressed concern about the requirement that the summary table for adjustable-rate and step-rate loans include the maximum rate applicable during the first five years after consummation. They noted that "5/1 ARM" loans typically provide for 60 regular periodic payments at the initial rate and that the rate typically does not adjust until at least the 61st full month after consummation. As a result, the payment summary table as prescribed in the September 2010 Interim Rule would not show the rate increase at the first adjustment of a typical "5/1 ARM" loan if the table is based on interest rate changes occurring during the first five years after consummation.

For interest-only loans, some commenters questioned the requirement that creditors disclose the earliest date on which the new interest rate can apply as well as the earliest date on which the corresponding payment would be due at the new rate. Because interest is paid in arrears on most mortgage transactions, those two dates are generally one month apart. Commenters noted that the structure of the table allows for only one date in each column.

Commenters also asked the Board to clarify whether certain types of loan products should be disclosed as "negative amortization loans." They noted that some loan products have features that may result in the principal balance increasing even though the consumer does not have the right on each due date to choose between making a minimum payment that causes

negative amortization and making a larger payment. For example, some loans provide for regular, amortizing payments, but have irregular payment schedules and periods when no payment is due, during which accrued interest is added to the principal balance. Commenters also noted that some loans have rates that adjust without a corresponding adjustment in the periodic payment in order to maintain the consumer's payment at a level amount; if the interest rate increases during the loan term, the principal balance may increase. These commenters stated that such products cannot be disclosed as negative amortization loans under the September 2010 Interim Rule, which calls for parallel disclosures of the consumer's minimum payment and full payment options.

Many of the commenters asked how the requirements for the new rate and payment summary table in § 226.18(s) affect the guidance in Appendix D for disclosing multiple-advance construction loans. Most home construction loans are covered by § 226.18(s) because they are secured by real property or a dwelling. Specifically, commenters sought clarification on whether the guidance in Appendix D for disclosing the "repayment schedule" for a construction loan remains applicable or, alternatively, whether the requirements of § 226.18(s) override the existing guidance in Appendix D.

The Board is adopting this interim rule to address the foregoing four issues. The Board is also adopting minor, technical revisions to address other uncertainties raised by the commenters, as discussed below.

V. Section-by-Section Analysis

Section 226.18 Content of Disclosures

18(h) Total of Payments

The Board is revising staff comment 18(h)–2 to clarify how to calculate the total of payments under § 226.18(h) for transactions secured by real property or a dwelling. Existing comment 18(h)–2 states that the total of payments is the sum of the payments disclosed under § 226.18(g). For transactions subject to § 226.18(s), however, no payment schedule will be disclosed under § 226.18(g). Accordingly, the Board is revising comment 18(h)–2 to provide that creditors should continue to follow the rules in § 226.18(g) and associated commentary, and comments 17(c)(1)–8 and –10 for adjustable-rate transactions, to calculate the total of payments for transactions secured by real property or a dwelling.

18(s) Interest Rate and Payment Summary for Mortgage Transactions

The Board is adopting new commentary language to clarify that references to "monthly" payments in the disclosures may be modified to reflect other periods when applicable, such as when payments are due quarterly instead of monthly. Section 226.18(s)(2)(i)(B)(*1*) provides that the interest rate at consummation must be disclosed and labeled "introductory rate and monthly payment." Under §§ 226.18(s)(3)(i)(D) and 226.18(s)(3)(ii)(D), for each interest rate disclosed under § 226.18(s)(2), the creditor must also disclose the sum of the corresponding periodic payment and any estimated escrow payment, which must be labeled "total estimated monthly payment." The Board has also published model clauses that use the word "monthly" in describing the disclosed payments.

Existing comment 18(s)(3)(i)(D)–1 provides that, if periodic payments are not due monthly, the creditor should use the appropriate term such as "quarterly" or "annually." There is no similar guidance, however under the other provisions. The Board is revising comment 18(s)–1 to clarify that the same guidance applies to §§ 226.18(s)(2)(i)(B)(*1*) and 226.18(s)(3)(ii)(D), as well as the model clauses.

18(s)(2) Interest Rates

18(s)(2)(i) Amortizing Loans

Maximum interest rate during first five years. The Board is revising § 226.18(s)(2)(i)(B)(*2*) to clarify the rule's application to adjustable-rate transactions that are "5/1 ARM" loans. As adopted in the September 2010 Interim Rule, § 226.18(s)(2)(i)(B)(*2*) requires disclosure of the maximum possible rate at any time during the first five years after consummation and the earliest date that rate may apply. As noted above, some commenters questioned whether the Board intended creditors to disclose the first adjustment for "5/1 ARMs" under this provision. Commenters stated the intent of the rule is unclear because the first rate adjustment generally occurs more than five years after consummation. For example, assuming a "5/1 ARM" loan is consummated on August 16, 2011, the first payment due date typically is October 1, 2011. The first rate adjustment then occurs on the due date of the 60th regular payment, September 1, 2016, which is more than five years after consummation. The Board intended that creditors disclose the first rate adjustment for a "5/1 ARM." To ensure that the first rate adjustment will be disclosed for "5/1 ARMs," the Board is revising § 226.18(s)(2)(i)(B)(*2*) to clarify that creditors should disclosure the maximum possible rate that will apply at any time during the first five years after the date on which the first regular periodic payment will be due, rather than after consummation.

Payment increases without regard to an interest rate adjustment. The Board is revising comment 18(s)(2)(i)(C)–1 to clarify that, for interest-only loans, creditors must disclose the change in the periodic payment when the consumer begins making payments that include principal as well as interest. Under § 226.18(s)(2)(i)(C), if an amortizing loan provides for a payment increase without regard to an interest rate adjustment (as described in § 226.18(s)(3)(i)(B)), the creditor must disclose an additional column showing the rate in effect at the time of such a payment increase and the date on which the payment increase will occur. Some commenters suggested that this additional column would not be required for an interest-only loan to show the change in the periodic payment when the consumer begins making payments that include principal. These commenters believe that, under the September 2010 Interim Rule, § 226.18(s)(3)(i)(B) does not apply to interest-only loans. In fact, the disclosure requirement of § 226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in § 226.18(s)(3)(i)(B), even if it is not the type of loan covered by § 226.18(s)(3)(i). In such a case, if the transaction is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to § 226.18(s)(3)(ii). The Board is revising comment 18(s)(2)(i)(C)–1 to clarify this point. The Board is also revising this comment to clarify that payment increases without regard to an interest rate increase do not include minor payment variations resulting solely from the fact that months have different numbers of days.

18(s)(3) Payments for Amortizing Loans

18(s)(3)(i) Principal and Interest Payments

Escrows. The Board is revising § 226.18(s)(3)(i)(C) to clarify when creditors must disclose estimated payments for taxes and insurance. Under § 226.18(s)(3)(i)(C) and accompanying comment 18(s)(3)(i)(C)–1, an estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow

account for such amounts, even if the escrow account is not required by the creditor. The regulation also states that the creditor must disclose that the escrow account is required if that is the case. Under the 2009 Closed-End Proposal, the statement that an escrow account is required would have been implemented in a separate part of the revised disclosure, outside of the interest rate and payment summary table. The inclusion of this requirement in the September 2010 Interim Rule, which implemented only the summary table, was an error. This requirement is being removed. Some commenters stated that the text of the regulation as implemented by the September 2010 Interim Rule could be read to suggest that the amounts for taxes and insurance should be disclosed only if the escrow account was required by the creditor. The Board's intent under the September 2010 Interim Rule, however, was to require disclosure of the estimated escrow payment if an escrow account will be established, whether the escrow account is required or not, as comment 18(s)(3)(i)(C)–1 indicates. Accordingly, the Board is revising the text of § 226.18(s)(3)(i)(C) to clarify the scope of the disclosure requirement.

The Board also is revising comment 18(s)(3)(i)(C)–1 to clarify how creditors should estimate the amounts for future taxes and insurance when such amounts must be disclosed in connection with changes in the periodic payment after consummation. Some commenters noted that estimating future taxes and insurance would be highly speculative. The September 2010 Interim Rule generally does not require creditors to make projections about future tax rates and insurance premiums. Creditors might be aware, however, of changes in mortgage insurance premiums that are based on the outstanding loan balance. Accordingly, the Board is revising comment 18(s)(3)(i)(C)–1 to clarify that, when escrow payments must be disclosed in multiple columns of the table, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in the periodic mortgage insurance premiums that are known to the creditor at the time the disclosure is made. The comment further explains that the estimated mortgage insurance premiums should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 226.18(s)(2) and accompanying commentary.

18(s)(3)(ii) Interest-Only Payments

Payment date. The Board is revising § 226.18(s)(3)(ii)(B) to remove the requirement to disclose the earliest date on which the payment disclosed under that section will be required. Under the September 2010 Interim Rule, for each interest rate disclosed, the creditor must disclose the earliest date that rate may apply and the corresponding periodic payment. For an interest-only loan, if the corresponding payment will be applied to both accrued interest and principal, § 226.18(s)(3)(ii)(B) further requires the creditor to disclose the earliest date that such payments will be required. Commenters questioned the requirement for disclosing two different dates in the same column and the potential for confusion. Because interest is paid in arrears on most mortgage transactions, those two dates are generally one month apart; commenters also noted that the structure of the table allows for only one date in each column.

The date in each column is intended to be the earliest date the interest rate may apply, not the date that the corresponding payment will take effect. Accordingly, the Board is revising § 226.18(s)(3)(ii)(B) by removing the language that requires creditors to disclose "the earliest date that such payments will be required." As revised, this interim rule clarifies that creditors should disclose the earliest date that the interest rate becomes effective rather than the date that the first payment is due under the new rate. Revised § 226.18(s)(3)(ii)(B) also clarifies that the itemized amounts disclosed as being applied to interest and principal when a consumer begins making principal and interest payments for an interest-only loan are those amounts for the first such payment.

18(s)(7) Definitions

"*Negative amortization loans.*" The Board is revising § 226.18(s)(7)(v) to clarify what types of loans are subject to the special disclosure requirements for "negative amortization loans." As adopted by the September 2010 Interim Rule, § 226.18(s)(7)(v) defines "negative amortization" as the "payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation." The rule also defines a "negative amortization loan" as "a loan that permits payments resulting in negative amortization, other than a reverse mortgage subject to § 226.33." Thus, some transactions that do not provide for multiple payment options, but that have repayment terms that may result in negative amortization, can be construed as negative amortization loans for purposes of the interest rate and payment summary table required by § 226.18(s). The special disclosure requirements for negative amortization loans and the model clause for such loans are intended to show consumers the effects of making minimum payments that result in negative amortization in comparison to the effects of making fully amortizing payments; the Board did not intend to apply those requirements to loans that do not provide for such minimum payments.

Accordingly, the Board is revising the definition of "negative amortization loan" in § 226.18(s)(7) to clarify which transactions are subject to the disclosure requirements for such loans in § 226.18(s)(2)(ii). Specifically, under the revised definition the special disclosures for "negative amortization loans" would apply only to loan products that have minimum required payments that result in negative amortization. For example, certain loans that are designed for borrowers with seasonal income require periodic amortizing payments but do not require the borrower to make payments in certain months; during months when no payment is made the accrued interest increases the principal balance. Also, some adjustable-rate loans provide for fixed periodic payments that do not adjust when the interest rate adjusts; in cases where the interest rate increases during the loan term, the additional accrued interest increases the principal balance. As clarified, the special disclosure requirements for negative amortization loans will not apply to such loans, even though the principal balance might increase during the loan term when accrued interest is capitalized. New comment 18(s)(7)–1 has been added to note that such loans will be disclosed under the rules for amortizing loans.

The revised definition will limit the meaning of "negative amortization loan" to loan products that can be disclosed meaningfully under the special rules for negative amortization loans. If a loan provides for a minimum periodic payment that causes negative amortization, creditors must disclose the corresponding fully amortizing payment in a parallel row of the table, as contemplated by §§ 226.18(s)(2)(ii) and 226.18(s)(4) and Model Clause H–4(G).

Appendix D—Multiple-Advance Construction Loans

The Board is adopting a new comment under Appendix D to clarify

the impact of § 226.18(s) on the appendix's guidance for disclosing the "repayment schedule" when construction financing is secured by real property or a dwelling. A creditor that also might permanently finance the construction phase has the option of disclosing the construction and permanent phases as separate transactions or as a single transaction. *See* § 226.17(c)(6)(ii). Part I of Appendix D provides guidance for disclosing the construction financing as a separate transaction, while Part II provides guidance on disclosing the construction and permanent financing as one transaction.

For loans secured by real property or a dwelling, if a creditor elects to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed in accordance with § 226.18(s), as adopted by the September 2010 Interim Rule and modified by this interim rule. Under § 226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in Appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 226.18(g)" does not apply because the transaction is governed by § 226.18(s) rather than § 226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 226.18(s)(5). This guidance is being added to the commentary as new comment App. D–6.

On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to Appendix D, Part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under § 226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 226.18(s) to the permanent phase only. For example, under § 226.18(s)(2)(i)(A) or § 226.18(s)(2)(i)(B)(*1*), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase. This guidance is also reflected in new comment App. D–6.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

This interim rule amends comment App. G and H–1 to provide that creditors may revise the column heading in Model Clause H–4(H) to reflect the column heading required by § 226.18(s)(2)(i)(C) of the regulation. Commenters noted a discrepancy between § 226.18(s)(2)(i)(C) and Model Clause H–4(H). Section 226.18(s)(2)(i)(C) states that the column heading must be labeled as "first adjustment" if the loan is an adjustable-rate mortgage or, otherwise, labeled as "first increase." Due to a technical error, the heading in Model Clause H–4(H) is incorrectly labeled "maximum ever." TILA Section 105(b) provides creditors with a safe harbor if they use any model form or clause published by the Board. Thus, use of Model Clause H–4(H) as published in the September 2010 Interim Rule is deemed to be in compliance with § 226.18(s)(2)(i)(C). Comment App. G and H–1 is being amended, however, to clarify that the same safe harbor is available to creditors that use the model clause but alter the column heading to read "first adjustment" or "first increase," as applicable, in compliance with the literal requirement of § 226.18(s)(2)(i)(C).

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed this interim rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Board also conducted such a review for the September 2010 Interim Rule. *See* 75 FR 58470, 58479–80; Sept. 24, 2010. The Board believes that the technical revisions made by this interim rule do not alter the findings in the Board's previous PRA review. The revisions do not add to the disclosure requirements adopted in the September 2010 Interim Rule but, rather, only resolve uncertainties and clarify under certain circumstances which of those disclosure requirements apply to which types of mortgage loan products and how. Accordingly, for purposes of this interim rule, the Board refers to the findings of the PRA review set forth in the September 2010 Interim Rule.

The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VII. Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, the Board published a final regulatory flexibility analysis for the amendments to Regulation Z in the September 2010 Interim Rule. *See* 75 FR 58470, 58480–82; Sept. 24, 2010. For the reasons discussed above regarding the PRA, the Board believes that this interim rule does not affect the Board's prior regulatory flexibility analysis and that it therefore continues to apply for purposes of this interim rule. The Board notes, in fact, that the revisions this interim rule makes to the provisions of Regulation Z adopted in the September 2010 Interim Rule are for the purpose of resolving conflicts and uncertainties, thus facilitating compliance for creditors. Consequently, to the extent this interim rule has any effect on the Board's prior regulatory flexibility analysis, it is to reduce the overall impact of the September 2010 Interim Rule on all entities, including small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart C—Closed-End Credit

■ 2. Section 226.18 is amended by revising paragraphs (s)(2)(i)(B)(*2*),

(s)(3)(i)(C), (s)(3)(ii)(B), and (s)(7)(v) to read as follows:

§ 226.18 Content of disclosures.

* * * * *

(s) * * *

(2) * * *

(i) * * *

(B) * * *

(*2*) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years"; and

* * * * *

(3) * * *

(i) * * *

(C) If an escrow account will be established, an estimate of the amount of taxes and insurance, including any mortgage insurance, payable with each periodic payment; and

* * * * *

(ii) * * *

(B) If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as "interest payment" and "principal payment," respectively;

* * * * *

(7) * * *

(v) The term "amortizing loan" means a loan in which payment of the periodic payments does not result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization" means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term "negative amortization loan" means a loan, other than a reverse mortgage subject to § 226.33, that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization.

* * * * *

■ 3. In Supplement I to Part 226:

■ A. Under *Section 226.18—Content of Disclosures, 18(h) Total of payments,* Paragraph 2 is revised.

■ B. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions,* Paragraph 1 is revised.

■ C. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(2) Interest rates, 18(s)(2)(i) Amortizing loans, Paragraph 18(s)(2)(i)(C),* paragraph 1 is revised.

■ D. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions, 18(s)(3) Payments for amortizing loans, Paragraph 18(s)(3)(i)(C),* paragraph 1 is revised.

■ E. Under *Section 226.18—Content of Disclosures, 18(s) Interest rate and payment summary for mortgage transactions,* new *18(s)(7) Definitions* and paragraph 1 are added.

■ F. Under Appendix D—Multiple Advance Construction Loans, new paragraph 6 is added.

■ G. Under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised.

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

18(h) Total of payments.

* * * * *

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under § 226.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph. To calculate the total of payments amount for transactions subject to § 226.18(s), creditors should use the rules in § 226.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)–8 and –10.

* * * * *

18(s) Interest rate and payment summary for mortgage transactions.

1. *In general.* Section 226.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for mortgage loans. The information in § 226.18(s)(2)–(4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in Appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 226.18(s)(2)–(4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 226.18(s) in § 226.18(s)(7).

* * * * *

Paragraph 18(s)(2)(i)(C)

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed-rate for the first five years following consummation and permit the borrower to make interest-only payments for the first three years. The disclosure requirement of § 226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in § 226.18(s)(3)(i)(B), even if it is not the type of loan covered by § 226.18(s)(3)(i). Thus, § 226.18(s)(2)(i)(C) requires that the creditor disclose the interest rate that corresponds to the first payment that includes principal as well as interest, even though the interest rate will not adjust at that time. In such cases, if the loan is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to § 226.18(s)(3)(ii). The table would show, from left to right: The interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment. The disclosure requirements of § 226.18(s)(2)(i)(C) do not apply to minor payment variations resulting solely from the fact that months have different numbers of days.

* * * * *

Paragraph 18(s)(3)(i)(C).

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 226.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums included in the escrow payment under § 226.18(s)(3)(i)(C), amounts

included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 226.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

* * * * *

18(s)(7) Definitions.

1. *Negative amortization loans.* Under § 226.18(s)(7)(v), a negative amortization loan is one that requires only a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. For such a loan, § 226.18(s)(4)(iii) requires creditors to disclose the fully amortizing periodic payment for each interest rate disclosed under § 226.18(s)(2)(ii), in addition to the minimum periodic payment, regardless of whether the legal obligation explicitly recites that the consumer may make the fully amortizing payment. Some loan types that result in negative amortization do not meet the definition of negative amortization loan for purposes of § 226.18(s). These include, for example, loans requiring level, amortizing payments but having a payment schedule containing gaps during which interest accrues and is added to the principal balance before regular, amortizing payments begin (or resume). For example, "seasonal income" loans may provide for amortizing payments during nine months of the year and no payments for the other three months; the required minimum payments (when made) are amortizing payments, thus such loans are not negative amortization loans under § 226.18(s)(7)(v). An adjustable-rate loan that has fixed periodic payments that do not adjust when the interest rate adjusts also would not be disclosed as a negative amortization loan under § 226.18(s). For example, assume the initial rate is 4%, for which the fully amortizing payment is $1500. Under the terms of the legal obligation, the consumer will make $1500 monthly payments even if the interest rate increases, and the additional interest is capitalized. The possibility (but not certainty) of negative amortization occurring after consummation does not make this transaction a negative amortization loan for purposes of § 226.18(s). Loans that do not meet the definition of negative amortization loan, even if they may have negative amortization, are amortizing loans and are disclosed under §§ 226.18(s)(2)(i) and 226.18(s)(3).

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Appendix D—Multiple Advance Construction Loans

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6. *Relation to § 226.18(s).* A creditor must disclose an interest rate and payment summary table for transactions secured by real property or a dwelling, pursuant to § 226.18(s), instead of the general payment schedule required by § 226.18(g). Accordingly, home construction loans that are secured by real property or a dwelling are subject to § 226.18(s) and not § 226.18(g). Under § 226.176(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.

i. If a creditor uses Appendix D and elects pursuant to § 226.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in § 226.18(s). Under § 226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in Appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 226.18(g)" does not apply because the transaction is governed by § 226.18(s) rather than § 226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 226.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to Appendix D, Part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under § 226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 226.18(s) to the permanent phase only. For example, under § 226.18(s)(2)(i)(A) or § 226.18(s)(2)(i)(B)(*1*), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). Creditors may modify the heading of the second column shown in Model Clause H–4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 226.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 21, 2010. Certain amendments to the Official Staff Commentary were approved by the Director of the Division of Consumer and Community Affairs, acting under authority delegated by the Board.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–32534 Filed 12–28–10; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA–2010–0033]

RIN 0960–AH24

Amendments to Regulations Regarding Eligibility for a Medicare Prescription Drug Subsidy

AGENCY: Social Security Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: We are revising our regulations to incorporate changes to the Medicare prescription drug coverage low-income subsidy (Extra Help) program made by the Affordable Care Act which was enacted on March 23, 2010. Under our interpretation of section 3304 of the Affordable Care Act and this interim final rule, if the death of a beneficiary's spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will, based on a determination, or redetermination, extend the effective period of eligibility for the most recent determination or redetermination until 1 year after the